

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Norman Smith**

Case No. 10-81240

Chapter 13

Social Security No. xxx-xx-7739

Address: 1203 Park Avenue, Durham, NC 27701-

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Debtor

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**MOTION TO MODIFY PLAN**

**NOW COMES the Debtor**, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on April 12, 2010, with the Chapter 13 plan being subsequently confirmed on October 8, 2010.
2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:  
  
From: \$1,223.00 per month.  
  
To: \$1,223.00 per month through March 2011, followed thereafter by \$1,664.00 per month, starting in June 2011.
3. The changed circumstances that justify the proposed modification are as follows:
  - a. The Debtor was unsuccessful in his attempt to avoid the mortgage held by Citimortgage.
  - b. Accordingly, this modification will treat Citimortgage as a long-term non-dischargeable claim, curing any arrearage.
  - c. This modification will also adjust the treatment of the claim of the IRS, which was allowed as secured based on the absence of any liens on the real property. With the lien of Citimortgage being allowed, the secured claim of the IRS should instead be for \$17733.32.
  - d. The Debtor was hospitalized for nearly three weeks.
4. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as

detailed on the attached Chapter 13 Worksheet:

- a. Filed and allowed claims different from schedules.

**Appended Application for an Additional Attorney Fee**

5. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: April 6, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward Boltz

Edward Boltz

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

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**CERTIFICATE OF SERVICE**

I, Patty Cherigo, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on April 6, 2011, I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II  
Chapter 13 Trustee  
Michael West  
U.S. Bankruptcy Administrator

Norman Smith  
1203 Park Avenue,  
Durham, NC 27701-

All creditors at the addresses listed thereon.

/s Patty Cherigo  
Patty Cherigo

# CH. 13 PLAN - DEBTS SHEET (MIDDLE DISTRICT - DESARDI VERSION)

Date: 4/4/11

Lastname-SS#: smith-7739 MTM

## RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN

## SURRENDER COLLATERAL

Creditor Name	Sch D #	Description of Collateral

Creditor Name	Description of Collateral

## ARREARAGE CLAIMS

## REJECTED EXECUTORY CONTRACTS LEASES

Creditor Name	Sch D #	Arrearage Amount	(See f)
			**
			**
			**
			**
			**
Citimortgage		\$9,337	**
		\$4,126	**
			**
			**

Creditor Name	Description of Collateral

## LTD - DOT ON PRINCIPAL RESIDENCE & OTHER LONG TERM DEBTS

Creditor Name	Sch D #	Monthly Contract Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
Citimortgage		\$567	N/A	n/a	\$567.00	House & Land
			N/A	n/a		
			N/A	n/a		
			N/A	n/a		

## STD - SECURED DEBTS a 190

Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
			5.00			
			5.00			
			5.00			
			5.00			

## STD - SECURED DEBTS a 190\*

Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
			5.00			
			5.00			
			5.00			
			5.00			

## ATTORNEY FEE (Unpaid part)

Amount

Law Offices of John T. Orcutt, P.C.

\$1,849

## SECURED TAXES

Secured Amt

IRS Tax Liens

\$14,901

Real Property Taxes on Retained Realty

\$2,483

## UNSECURED PRIORITY DEBTS

Amount

IRS Taxes

\$25,183

State Taxes

Personal Property Taxes

Alimony or Child Support Arrearage

## CO-SIGN PROTECT (Pay 100%)

Int. Rate

Payoff Amt

## All Co-Sign Protect Debts (See\*)

## GENERAL NON-PRIORITY UNSECURED

Amount\*\*

DMI= None(\$0)

None(\$0)

## PROPOSED CHAPTER 13 PLAN PAYMENT

\$ **\$1,664** per month for **60** months, then

\$ **N/A** per month for **N/A** months.

Adequate Protection Payment Period: **1.29** months.

Sch D # = The number of the secured debt as listed on Schedule D.

Adequate Protection = Monthly 'Adequate Protection' payment amt.

\* = May include up to 2 post-petition payments.

\* Co-sign protect on all debts so designated on the filed schedules.

\*\* = Greater of DMI x ACP or EAE

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Ch13Plan\_MD\_(DeSardi Version 1/12/10) © LOJTO

## Other Miscellaneous Provisions

Plan to allow for 3 "waivers".